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# Supreme Court of the United States

OCTOBER TERM, 1931

No. 67

RAY LYMAN WILBUR, AS SECRETARY OF THE INTERIOR,

*Petitioner*

v.

THE UNITED STATES OF AMERICA, EX REL., CHESTATEE PYRITES & CHEMICAL CORPORATION,

*Respondent*

## BRIEF FOR RESPONDENT

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THE UNITED STATES OF AMERICA, EX REL., CHESTATEE PYRITES & CHEMICAL CORPORATION,

*Respondent*

## BRIEF FOR RESPONDENT

### JURISDICTION

This cause was brought under the authority of the Act of February 13, 1929, on the relation of the Chestatee Pyrites & Chemical Corporation in the Supreme Court of the District of Columbia, which Court held that the Secretary of the Interior there made Respondent had "properly adjudicated" "the

questions of law" and "the petition for review and mandamus" was dismissed (R. 27).

On appeal to the Court of Appeals of the District the trial Court was reversed. [See opinion record 30-33, *United States ex rel. Chestatee Pyrites & Chemical Corporation v. Wilbur*, 60 *App. D. C.*....., 47 *F*; (2*d*) 424.]

Secretary Wilbur petitioned this Court for its writ of certiorari which was granted.

If the Petitioner were correct as argued in his brief herein that the Act of 1929 only authorizes advisory opinions this Court would under the authority of *Federal Radio Com. v. General Electric Co.*, 281 *U. S.* 464, 469, and similar cases, be without jurisdiction. However, as this Act gives full jurisdiction to decide questions of law and requires the Court's decision to be certified to and followed by the Secretary, there is jurisdiction of this writ.

## ISSUE

Respondent here filed a claim with the Secretary of the Interior for its "net losses" incurred as authorized by the Act of March 2, 1919 (see Appendix 6 and c. 94, 40 Stat. 1272, 1274), and, quoting from the opinion of the Court of Appeals:

> "The sole question presented is whether interest paid or agreed to be paid by the relator on borrowed money expended in producing or preparing to produce pyrites constitutes a loss which, by the terms of that act, the Secretary should recognize and pay." (R. 30.)

## APPENDIX

We have in an Appendix filed herewith given opportunity to the Court to inform itself of the legislative history. We do not concede that any resort to this history other than the statutes is permissible in this case; but, inasmuch as Petitioner makes reference thereto, we discuss such history briefly herein and have assembled facts that will enable the Court to have accessible adequate statements thereof.

## SUMMARY OF ARGUMENT

1. Losses sustained by payments and obligations to make payments for money borrowed are losses the net amount of which the Act of March 2, 1919, provides should be adjusted, liquidated and paid.

2. Construing, as should be done, all the Acts of the Congress relating to the same subject as that of the Act of 1919, the principle just stated is further supported.

3. Debates in the Congress and proceedings and reports of committees thereof should not be resorted to here; but, if resort thereto be had, there is confirmation of the construction stated above.

4. The Act of February 18, 1929, under authority of which this proceeding was brought, gives power to the judiciary to decide questions of law and to certify such decisions to the Petitioner who will be bound thereby.

## CHRONOLOGICAL HISTORY OF THE CASE

When on the 6th day of April, 1917, the Congress declared that war existed between the United States and the Imperial Government of Germany, it was found that there was urgent need for many minerals which had not theretofore been produced in the United States in sufficient quantities to meet this need.

Therefore legislation was proposed in the Congress which, after long discussion, resulted in the Act of October 5, 1918. (See Appendix 2.) Pending the consideration of this Act the Cabinet Officers were not idle and the Secretary of the Interior, Hon. Franklin K. Lane, was especially active in urging the production of the needed minerals among which was pyrites.

Mr. Secretary Lane promptly after the declaration of war, toured the section where pyrites ores existed, had a map thereof made and selected "a very live man" to see that "some pyrites is developed," and that man "developed five mines." The Secretary describing this to a committee of the Congress about March 25, 1918, said this development was possible "provided that the man who develops the small deposit in the United States can be assured that he will get his money out of the investment" (Appendix 10, 11).

Mr. Secretary Lane's agent, the "very live man," Mr. Callaway, discussed the situation with George L. Pratt, an officer of Respondent, and asked for a

statement of the properties (Appendix 11, 12). Mr. Pratt, foreseeing the consequences which later developed, was disinclined to enlarge his enterprise and on July 18, 1917, he discussed in a memorandum furnished at the request of Mr. Callaway the character of the properties, the danger of complying with the request for enlargement, and stated what he thought the Government should do (Appendix 12 to 20). Among the things he asked should be done was—

> "Fifth. Underwrite in some way the hazard of mining risk which now seems warranted on account of the urgent necessity of heavy tonnage of ore, but which would not seem to be justified under sound conservative business principles in normal times." (Appendix 19.)

The Petitioner here in his answer shows:

> "In this particular case, as is testified, the then Secretary of the Interior personally requested one of the claimants to operate the properties on a big scale, which claimant at first declined to do, unless the Government should underwrite the venture. This of course was impossible, and after some delay the Secretary, through his personal agent, requested Ashcraft and Wilkinson to use their influence to induce claimant to enlarge his operations, and further, he asked them to assist in financi g him. Ashcraft and Wilkinson did so use their influence, and with success, and did finance claimants, for which financing claimant is obligated for a large amount." (R. 12.)

Further in this report it was said:

> "The activities of the Government to induce Ashcraft and Wilkinson to finance claimant, so that war needs might be met quickly and in

large measure, were personal, direct, and effective." (R. 14.)

In another part of the record here Petitioner shows the activities of Mr. Secretary Lane by quoting from a finding of the Department of the Interior as follows:

> "If I have seemed to deal with it liberally, it was because the record showed that the then Secretary of the Interior, realizing no doubt that this property presented opportunity for the *biggest production of pyrites in the entire country*, used every means in his power to persuade the claimant to develop it. It is true that he could not and did not guarantee claimant against loss, but his full influence short of underwriting the project was exerted." (R. 17.) (Emphasis supplied.)

This report was approved by the Secretary (R. 18).

## Act October 5, 1918

The Congress on October 5, 1918, authorized the President to purchase or take over the means of meeting the needs of the Government, and provided that just compensation determined by the President should be paid and, if dispute arose as to the amount, suit could be filed. An appropriation of $50,000,000 was made (Appendix 34). The effective date of this Act being so near the Armistice and coming at a time when the Executive probably knew that the Armistice was near, was not enforced.

## Act March 2, 1919

Many patriotic citizens, including the Respondent here, yielded to the demands of the Government and made expenditures, incurred obligations and increased production beyond the needs in the United States after the termination of the war. To meet the obligation of the Government resulting from these efforts of the Executive Departments and as supplementing the Act of October 5, 1918, the Congress passed the Act of March 2, 1919. (Appendix 6.)

## Respondent Files Its Claim

Respondent, the Chestatee Pyrites & Chemical Corporation, filed its claim number one with the Secretary of the Interior. The Secretary appointed a commission to act on all claims and at first this commission sought by a method of proration to determine expenditures before and after the date of the declaration of the existence of war. In this plan no distinction was made between losses for money paid and obligations incurred for borrowed money and other losses.

Subsequent Secretaries changed the plan of arriving at net losses and sought to determine all losses and then deduct from such losses such items as the Secretary thought were not included within the meaning of the statute. Among other deductions made was that shown in this record p. 17.

## An Appeal Was Made to the Congress

Respondent and other claimants were dissatisfied with the niggardly allowances made by the commis-

sion so appointed and appealed to the Congress. H. J. Res. 170 was introduced and hearings thereon had. At the time of the hearings which began October 22, 1919, no issue was made before the Congress as to interest because that issue had not at that time arisen.

## The House Committee Criticized the Administration of the Act

On March 25, 1920, the Committee on Mines and Mining said:

> "The committee is of the opinion that the commission erred in its interpretation of the legislative intent, its interpretation and application of the provisions of the act, and the application of the provisions of the law to the facts."

The Committee then quoted the Act of March 2, 1919, and said that the language of the Act was:

> "* * * clear, and if interpreted as the courts of the country have repeatedly held such statutes should be interpreted, the committee is of the opinion that the purpose of Congress can be fully carried out and a 'just and equitable' settlement can be had of every legitimate claim."

The Committee then quoted decisions of this Court, including *United States v. State of New York*, 160 U. S. 598, and concluded by saying that,

> "For the reasons above stated the committee has not thought it necessary to amend the original act * * *." (See Report in full, Appendix 28.)

The amendment of November 23, 1921, was later passed (Appendix 29).

## Respondent Appeals to the Courts

In 1923 Respondent here filed its petition in the Supreme Court of the District of Columbia seeking a writ of mandamus to compel the Secretary of the Interior to pay its net losses for moneys expended in payment of interest on borrowed money and obligations incurred therefor. The Supreme Court of the District on the 9th day of January, 1924, sustained the demurrer of the Chestatee Pyrites & Chemical Corporation to the answer of the Secretary of the Interior and held that it was erroneous for the Secretary to deny the losses suffered by the Respondent here for the payments made for the use of borrowed money and obligations therefor. (See Opinion in full, Appendix 30.) The Secretary took an appeal to the Court of Appeals of the District of Columbia and the lower court was there affirmed. *Work v. United States ex rel., Chestatee Pyrites & Chemical Corporation*, 54 *App. D. C.* 380, 298 *F.* 889.

While these two decisions in favor of Respondent remained unreversed, and on February 22, 1924, the Secretary of the Interior wrote to the Chairman of the appropriate committees of the House and Senate with reference to pending legislation. In this communication the Secretary discussed the decision of the Supreme Court of the District of Columbia awarding a writ of mandamus to Respondent, and appended to show that the limited appropriation of $2,500,000 was inadequate if the decisions of the Supreme Court and of the Court of Appeals of the District stood (Appendix 32). Following this letter, and on the 7th day of June, 1924, the Congress showed, we submit, an approval of the decisions of the Su-

preme Court of the District and of the Court of Appeals by striking the limitation of $8,500,000 and leaving in force the original appropriation of $50,000,000. (See Act June 7, 1924, Appendix 34.) It will be recalled that the Act of 1918 carried an appropriation of $50,000,000 and that the Act of 1919 reduced this appropriation to $8,500,000.

Subsequently the decision of the Court of Appeals in Respondent's case was brought here and this Court held that the Secretary of the Interior having final discretion, no jurisdiction existed in the Supreme Court of the District to award the writ of mandamus and the Court of Appeals was reversed. *Work v. United States ex rel., Chestatee Pyrites & Chemical Corporation*, 267 *U. S.* 185.

In order to give the courts jurisdiction appeal was again made to Congress and the Act of February 18, 1929, was passed, conferring jurisdiction in this and like cases

> "* * * to review the final decision of the Secretary of the Interior upon any question of law,"

leaving the Secretary the same discretion as formerly

> "on all questions of fact."

After the passage of the Act of February 18, 1929, and as authorized thereby, Respondent filed its petition for review and mandamus in the Supreme Court of the District. A response and later an answer was filed by the Secretary, Petitioner here, with exhibits attached showing the facts, and the cause was determined by the Court on demurrer to

the answer. The District Supreme Court held that the Secretary of the Interior had correctly adjudicated the questions of law (R. 27). An appeal was taken to the Court of Appeals of the District where the trial Court was reversed in an opinion by Mr. Justice Wheat (R. 30) and thereafter this writ was granted.

## ARGUMENT

The Secretary in his brief herein relies on two propositions which may be stated as, (1) the contention that the Act of February 13, 1929 (Appendix 53), does not authorize this review, and (2) that the Secretary's decision was correct as a matter of law.

### A. The Act of February 13, 1929 Authorized this Proceeding *

The Court of Appeals was entirely correct in saying that the purpose of that Act was to give the Court authority to decide whether the construction of the law by the Secretary was correct, and in adding

> " * * * if that was not its purpose then the statute is meaningless."

That such was the purpose admits of no doubt. The express provision of the Act is that a claimant

> "* * * may * * * petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen," etc.

---

*This proposition is also discussed in Respondent's brief in Docket 66.

Unless this review is meaningless the statute authorizes the Court to determine whether the Secretary has correctly construed the question of law and the Secretary must follow this determination. For this Congress expressly provided. The fourth section of the Act of 1929 requires that the Clerk

> "* * * shall, without delay, certify to the Secretary of the Interior the final judgment or decree therein, *whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.*" (Emphasis supplied.)

The record of the Department of the Interior fully supports our contention with reference to the Construction of the Act of 1929.

The amount of Respondent's claim, said a former Secretary, "has been computed and determined and is known"; (post 18) therefore, there is left no room for the exercise of discretion.

When the Act of 1929 was pending in the Congress, Honorable Edward C. Finney, Assistant Secretary of the Interior and counsel in this case (R. 6) stated that after a "determination * * * it becomes our duty to carry out the law as construed by the courts * * *, so we prepared a proposed report to the committee expressing that view; * * * and our proposed report was to the effect that we favored it" (Appendix 43).

He was specifically discussing before the committee the legal issue as to the right of claimants to recover losses of "interest paid and obligated to be paid" and he answering a question, reiterated the

opinion of the Department by agreeing that it "looks with favor upon the enactment of this legislation" and that he "would be very glad" to have the "question of law" "settled by the courts." (Id. 44.) The attitude of the House Committee is shown by a quotation from the hearings before the Committee on Mines and Mining at the second session of the Seventieth Congress on H. R. 15861:

> "MR. VINSON. It doesn't permit the court to consider the facts at all. It merely construes the law.
>
> "THE CHAIRMAN. And that is the thought in everybody's mind about it. The Department of the Interior has said it does not embrace interest on capital cost, cost *for* the purchase of property.
>
> "MR VINSON. Interest and capital invested.
>
> "THE CHAIRMAN. Capital invested in the purchase of property, or interest on borrowed capital. Now, it will go to the courts for a decision on those two questions.
>
> "MR. VINSON. As a matter of law.
>
> "THE CHAIRMAN. As a matter of law." (Appendix 48.)

Hon. John H. Edwards, Assistant Secretary of the Interior, told the Congressional Committee:

> "The Interior Department is willing at all times for questions of law to be determined by the courts. If the Department of the Interior has misconstrued an act, the department is anxious that the proper construction be placed upon it. Of course, there are always differences of opinion as to what is the proper construction of an

act. Those differences are never settled until some court settles them." (Appendix 50.)

Mr. Edwards also showed that the claim here before the Court with one other, that for purchase of property, presented the mischief of the old law which the Act of 1929 was to remedy, and he said:

> "If the Department of the Interior has misconstrued the present law, then we have denied to claimants that which they are rightfully entitled to have under a proper construction." (Appendix 50.)

Further:

> "MR. VINSON. And *the opinion of the court would be the final settlement of this matter for all time to come?*
>
> "MR. EDWARDS. *There is no question about it,* because it would remove from the realm of controversy and doubt the question. The *Interior Department* as well as the claimants would have to accept that as a *finality.* (Emphasis supplied.) (Appendix 52.)

Respondent below, Petitioner here, filed first a response to the rule to show cause stating the issue to be:

> "Whether or not one who was engaged in producing or preparing to produce any of the minerals named in said act and sustained a net loss on account of, or including, interest paid on borrowed money, or indebtedness applied as to capital (sic) compliance with its provisions is entitled to have such interest loss reimbursed." (R. 5, 6.)

and stated further:

> "Under the act of February 13, 1929 (Public No. 738, 70th Congress), this court is vested

with jurisdiction to review such questions of law as may have been decided in the disposition of petitioner's said claim by the Secretary of the Interior, and respondent makes no objection to, but on the other hand invites, a review of such questions." (R. 6.)

Respondent's claim was "computed and known," but;

> "The unusual and purely fortuitous circumstance that the character of this jurisdictional limitation on the power of the Commission chances to be such that the giving of a correct construction to it must result in determining the character of the decision which the Commission must render when the case is returned to it cannot affect the power of this court or that of the lower courts to define what that jurisdiction is under the act of Congress, or the duty of the Commission to accept and act upon such definition when announced."

*United States, ex rel. v. Interstate Commerce Commission*, 246 *U. S.* 638, 644, 645.

## B. Interest Paid for Borrowed Money, as Well as Obligations Incurred Therefor, Is a Loss

### Analyzing the Act of March 2, 1919 *

Respondent is entitled to be paid,

---

*The statute being "a remedial one * * * should be construed liberally to carry out the wise and salutary purposes of its enactment."

*Stewart v. Kahn*, 78 *U. S.*, 11 *Wall.* 493, 504; *Monongahela Nav. Co. v. United States*, 148 *U. S.* 312, 326. The Congressional Committee cited this rule and these authorities (Appendix 28).

1. "Such net losses as" it has suffered "by reason of producing or preparing to produce * * * pyrites;"

2. If such losses were incurred in compliance with the request or demand of the Department of the Interior "* * * to supply the urgent needs of the Nation in the prosecution of the war;" and

3. In adjudicating and paying such "net losses" the Secretary shall fix the amount at what is just and equitable.

Explanatory Provisos

4. Only claims filed within three months from the approval of the Act shall be considered;

5. And "no claim shall be allowed or paid * * * unless it shall appear to the satisfaction of said Secretary that the expenditures so made or obligations so incurred were made in good faith for or upon property which contained * * * pyrites * * * in sufficient quantities to be of commercial importance;" and

6. The losses must have accrued during the war; and

7. No profits could be "included in the allowance;" and

8. No speculative purposes could be recognized; and

9. Salvage must be deducted.

1.

## "SUCH NET LOSSES AS" IT SUFFERED "BY REASON OF PRODUCING OR PREPARING TO PRODUCE * * * PYRITES."

That Respondent suffered net losses is not seriously questioned, in fact is admitted. A review of the facts of this claim was made by Mr. John Briar, Assistant Commissioner, who reported in detail the facts (Exhibit D, R. 8 and following). In this report Mr. Briar described how the award made theretofore was reached and stated that it was the purpose of the Department of the Interior to ascertain

> "* * * the loss during the stimulated period for which it is responsible by simply deducting from the expenditures for that period the items which must be disallowed, the receipts, and the salaries" (R. 9).

Further Mr. Briar said:

> "All interest charges have been deducted. It is not believed that the act contemplates the payment of interest on borrowed capital." (R. 9.)

In setting up the items to be deducted an interest charge of $40,795.13 is deducted (R. 17).

When this case was here before (and this court may consider the record therein *) Secretary Work, who was the appellant there (see paragraph 15, R. 9, 10 of the former record) said:

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* *National Fire Ins. Co. v. Thompson*, 281 U. S. 331.

"* * * he denies that he and his predecessors in office have refused to adjudicate the relator's claim in so far as it involves expenditure and obligation for interest incurred, and, on the contrary, avers the fact to be that he has considered and adjudicated said claim and has found and determined that the *said items of interest, the amount of which has been computed and determined, and is known to him*, are no part of the amount of losses which he can regard or does regard as justly and equitably due from the United States to the relator under the provisions of the acts of March 2, 1919, and November 23, 1921." (Emphasis supplied.)

At page 8 of Petitioner's brief herein it is said:

"It is clear that interest paid on money borrowed is not an expenditure 'for or upon property' containing a war mineral."

No such contention has heretofore been made by the Department of the Interior nor do we believe the contention now made is sound. This dogmatic statement might be true of some interest paid but is not true here. It has been definitely shown above that under the compulsory activities of the Secretary of the Interior and yielding judgment to patriotism, Respondent borrowed money which was used for and upon property which contained the largest bed of pyrites ores in the country and that such money was spent in good faith and legitimately in producing and preparing to produce this urgently needed ore.

The proviso, here for the first time urged in this connection, had as its purpose the designation of property possessing the needed mineral "in sufficient quantities to be of commercial importance," and did not and could not repeal the enacting clause but

specifically referred thereto by the words "expenditures *so made*" ("in producing or preparing to produce," language contained in the first sentence of the Act) or "obligations *so* incurred."

Petitioner says:

> "Congress did not provide that all losses should be paid * * *"

Congress did provide for the payment of "net losses" "suffered" "by reason of producing or preparing to produce" "pyrites." It is true that these losses must be suffered by reason of producing or *preparing* to produce from lands containing pyrites "in commercial quantities." Borrowing money, Mr. Secretary Lane thought, was a necessary preparation and that he was right is so obvious that this late contention now made evidences doubt by the author of the soundness of the argument of Petitioner's brief.

To borrow money when the Nation is imperiled and when urged by the Secretary of the Interior, to be used to pay labor, buy machinery, and make other expenditures necessary to make available to the Nation needed minerals certainly is "preparing to produce."

Petitioner in this part of his brief seeks to nullify a general right contained in an enacting clause by a proviso intended merely to describe the kind of mine from the operation of which the right arises. This is contrary to sound principles of statutory construction. In *United States v. Dickinson*, 40 *U. S.*, 15 *Pet.* 141, this Court held:

> "* * * where the enacting clause is general in its language and objects, and a proviso is after-

wards introduced, that proviso is construed strictly and takes no case out of the enacting clause which does not fall fairly within its terms."

In *Ryan v. Carter*, 93 *U. S.* 78, 84, there was for construction a proviso somewhat similar to the one here, and this Court stated the rule:

> "There is no known rule of law requiring the court to interpret this proviso according to the literal import of the words employed when the evident intention of the Legislature is different. It may be that the words taken in their usual sense, would exclude the case of Dodier; but if it can be gathered, from a view of the whole law, and others in pari materia, that they were not used in that sense, and they admit of another meaning in harmony with the general scope of the statute, it will be adopted as the declaration of the will of Congress on the subject. Especially is this so when this construction withdraws the least number of cases from the operation of the statute."

Respondent's construction of the statute not only follows sound and authoritative principles, it is supported by legislation referring to the same matter. The enacting clause is not only general, it is repeated in the Act of November 23, 1921 (Appendix 29), where is repeated the language:

> "* * * all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein * * * *shall* be reimbursed such net losses as they have incurred and are in *jus-*

*tice and equity* entitled to from the appropriation of said act." (Emphasis supplied.) (Appendix 29.)

The Act of 1921 it must be remembered followed a report critical of the administration of the Act of 1919, in which report the Committee on Mines and Mining had told the Secretary that the Act of 1919 "is clear," that "if interpreted" as "such statutes should be interpreted" settlement of every "legitimate claim" could be had, the Secretary was informed of decisions of this Court and told that no amendment was necessary. However, to emphasize its purpose the mandatory words "shall be reimbursed" were stated in the Act of 1921 in repeating the enacting clause of the Act of 1919.

Respondent had a small enterprise, one inadequately financed for a large operation. The Nation told it that there was urgent need for more pyrites. Its officers demurred, lack of funds was apparent, Government aid was absolutely necessary, the Nation through Secretary Lane, obtained a lender to furnish such funds and the obligations to repay these funds was but a "preparation" for producing the urgently needed mineral. The Congress says these "obligations" incurred "shall be reimbursed," and that is what is here prayed.

The interpretation of the proviso now relied upon by Petitioner is thus shown to be unsound and it is also true that the words "for" and "upon" are themselves broad enough to include borrowing money and its inherent incident, paying interest thereon. Those administering the law held as early as 1919—

"There are numerous other instances where there have been—where the expenditure for offices—we have got some claims where they had offices in New York City and offices at the railroad station near the mine. We take those office expenses and allow them, but they are not upon the property, but they are for the property, and for that reason the use of that word 'for' is very essential in there * * *" (H. J. Res. 170 p. 152).

"For," we contend, means "in consideration of," "on account of"; the Secretary decided in 1919, and has not changed his decision since unless Petitioner's brief means such a change, that it means for "the benefit of." The word has all these meanings.

"Upon" and its synonym "on" include expenditures made for and on account of the development of land. In *Chambers v. Harrington*, 111 *U. S.* 350, 353, 354, this Court quoted with approval Judge Sawyer in the case of *M. & M. Co. v. Callison*, 5 *Sawy.*, 439, who said:

> "Work done outside of the claim, or *outside of any claim*, if done for the *purpose* and *as a means* of *prospecting* or *developing* the claim, as in cases of tunnels, drifts, etc., is as available for holding the claim, as if done within the boundaries of the claim itself." (Emphasis supplied.)

2.

IF SUCH LOSSES WERE INCURRED IN COMPLIANCE WITH THE REQUEST OR DEMAND OF THE DEPARTMENT OF THE INTERIOR "* * * TO SUPPLY THE URGENT NEEDS OF THE NATION IN THE PROSECUTION OF THE WAR."

We have shown above requests and demands, and Mr. Secretary Lane not only sent a "live" agent to Respondent, he himself urged Respondent and went so far as to induce Ashcraft, Wilkinson & Company to lend the money the interest on which Respondent paid and lost.

3.

IN ADJUDICATING AND PAYING SUCH "NET LOSSES" THE SECRETARY SHALL FIX THE AMOUNT AT WHAT IS JUST AND EQUITABLE.

As the facts are undisputed and as there is no room for discretion in computing the sum of figures and as the Secretary has "computed" and as the amount "is known to him" legally, justly and equitably these known net losses should be paid.

4.

ONLY CLAIMS FILED WITHIN THREE MONTHS FROM THE APPROVAL OF THE ACT SHALL BE CONSIDERED.

The claim here was filed within three days after the passage of the Act of March 2, 1918.

5.

AND "NO CLAIM SHALL BE ALLOWED OR PAID * * * UNLESS IT SHALL APPEAR TO THE SATISFACTION OF SAID SECRETARY THAT THE EXPENDITURES SO MADE OR OBLIGATIONS SO INCURRED WERE MADE IN GOOD FAITH FOR OR UPON PROPERTY WHICH CONTAINED * * * PYRITES * * * IN SUFFICIENT QUANTITIES TO BE OF COMMERCIAL IMPORTANCE."

This provision was to prevent the payment of losses suffered by exploiting lands containing none of the named minerals in commercial quantities. Here the Secretary urged the expenditures and aided in borrowing the money for which obligations were incurred and Respondent's good faith and the existence of pyrites in commercial quantities was shown and is not questioned. (See also above p. 6.)

6.

THE LOSSES MUST HAVE ACCRUED DURING THE WAR.

The date of the losses during the required statutory period was definitely fixed and is not questioned.

7.

NO PROFITS COULD BE "INCLUDED IN THE ALLOWANCE."

No profits were allowed, nor are any such here claimed.

8.

NO SPECULATIVE PURPOSES COULD BE RECOGNIZED.

No speculative purpose existed or was claimed by Petitioner to exist.

9.

SALVAGE MUST BE DEDUCTED.

All salvage was deducted (R. 14, 15).

Having met literally every provision of the statute, Respondent should be paid its net losses.

The unquestioned facts fitting so fully the unambiguous statute would seem to make further discussion unnecessary. We are not, however, without authority from this Court in support of the conclusion we seek. The case of *United States v. State of New York*, 160 *U. S.* 598, relied upon by the Committee

on Mines and Mining, the Supreme Court of the District in its opinion on the first suit filed by Appellant, and in this case by the Court of Appeals, we submit is directly in point. There is *since the Act of February* 13, 1929, legally an exact parallel between this and the New York case.

| NEW YORK CASE | THIS CASE |
| --- | --- |
| A war was on. | A war was on. |
| A Cabinet Officer wired urging expenditures for urgent war need. | A Cabinet Officer sent agents and personally urged expenditures and the borrowing of money for urgent war needs. |
| New York borrowed money, some from one of its own agents and paid interest thereon. | Respondent borrowed from a source furnished by the Cabinet Officer and paid interest thereon. |
| The Act 1861 authorized the payment of "costs, charges and expenses *properly* incurred." (p. 624, opinion of the Court, New York case.) | The Act 1919 directed the Secretary "to adjust, liquidate, and pay such net losses as have been suffered" for "the expenditures so made or obligations so incurred," "*in good faith.*" |
| Under the Act of 1861 the Late Chief Justice Taft said: "The issue, therefore, was merely a *question of law* whether under the statute interest was payable and it was held that it was." (267 U. S. 181.) | Under the Act of 1929 courts have power "To review the final decision of the Secretary of the Interior upon any *question of law.*" |

In delivering the opinion of the Court in the New York case, Mr. Justice Harlan, at page 620, said:

"It would be a reflection upon the patriotic motives of Congress if we did not place a liberal interpretation upon those acts, and give effect to what, we are not permitted to doubt, was intended by their passage."

He further said:

"Liberally interpreted, it is clear that the acts * * * created on the part of the United States an obligation to indemnify the states of any costs, charges, and expenses properly incurred for the purposes expressed in the Act of 1861, the title of which shows that its object was 'to indemnify the states for expenses incurred by them in defense of the United States.'"

This Court sustained the claim of the State of New York for the interest, not only that paid the public but that actrued to its canal fund. "Expenses * * * incurred" in the statute under which New York recovered is no stronger than "money expended and obligations incurred," in the statute here.

Petitioner in his brief herein argues that the United States does not ordinarily pay interest. This proposition has no application here. We seek reimbursement for net losses and, following the New York case, such losses should be paid.

Petitioner also contends (Brief 11) that this Court distinguished this case from the New York case, above, and quotes part of a paragraph from the former opinion on this claim. The full paragraph should be read and when read it appears that following the quotation in the brief of Petitioner it was said:

"But it is not here on its merits. The question was one for the Secretary of the Interior to decide, and that finally."

The language quoted by Petitioner is a dictum and under the facts as they now are the circumstances of the two cases have changed and now are legally identical.

To illustrate:

This Court, speaking of the New York Statute, said that it "did not vest in the Secretary of the Treasury discretion finally to decide the extent of the indebtedness," and now it can be said of this case that there is no discretion in the Secretary "finally to decide" the law. The Court said, "the issue, therefore, was merely a question of law whether under the statute *interest* * *was payable* and it was held that it was," now, the issue is "merely a question of law." The question in the New York case, as here, is whether under the statute interest paid on borrowed money constitutes a loss, and this Court in the New York case answered in the affirmative.

Petitioner on brief delights to refer to Respondent's claim as "a new and unusual gratuity" (11). No honest man occupying a situation similar to the circumstances of this case would hesitate to recognize his obligation to repay the losses Respondent suffered. Here to serve their Nation and with no expectation of earning returns on the investment, the officers of the Respondent yielded their property, employed their credit and lost. To say it is a "new and

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* *By "interest" the court, as the context shows, meant interest paid on borrowed money.*

unusual gratuity" to recognize this obligation would, as said by this Court above, "be a reflection upon the patriotic motives of Congress."

The Act of March 2, 1919, is but a renewed and more specific promise to pay an honest obligation. As this Court said in *Allen v. Smith*, 173 *U. S.* 389, 402:

> "Such act was passed, as was held by this court, in *United States v. Realty Co.* 163 *U. S.* 427 (41:215), in *recognition of a moral obligation* to those who had put in their crop the previous year upon the faith of the bounty law then in existence. It was not so much a gift by the government as a reward paid in consideration of *expenses incurred* by the planters upon the faith of the government's promise to pay a bounty to the manufacturers and producers of sugar." (Emphasis supplied.)

Further holding that a "mere donation" "cannot be presumed to have been made even if it (the Congress) had the power," this Court said:

> "Bounties granted by a government are never pure donations, but are allowed either in consideration of services rendered or to be rendered, objects of public interest to be obtained, *production or manufacture* to be stimulated, or moral obligations to be recognized." (Emphasis supplied.)

## THE CLAIM OF DISCRIMINATION BY PETITIONER

It is claimed on brief of Petitioner that to pay net losses for interest paid and lost discriminates against those claimants, if any, who were not compelled to

borrow money. This argument could have as legitimately been made in the New York case, above and its validity was in effect there denied.

If the Congress, as we believe has been demonstrated, directed the payment of Respondent's losses, Petitioner should not be relieved from obedience to that law even if it were true that Congress should have directed the payment of the net losses of some one else.

This argument of Petitioner assumes that Congress refused to pay interest as such. This assumption does not under the authorities cited in the next subdivision of this brief, we submit, follow. If, however, such assumption may properly be made the argument is one that should be addressed to the Congress. Here in clear and unambiguous language "net losses * * * suffered * * * by reason of producing or preparing to produce," shall be adjusted, liquidated and paid.

Respondent in producing and preparing to produce suffered net losses, and the Congress says it should be paid. If some other person should be paid and no provision therefor exists, the Government is not excused from paying those whom Congress says shall be paid.

There is support in the decision of the Supreme Court of the District on the first trial of this case (Appendix 30) and other authorities in this Court for the proposition that losses include interest as such. We do not here have to rely on that proposition, but we submit:

## C. This Is a Claim for Losses and Not for Interest

By Act of October 5, 1918, section three, 40 Stat. 1009 (Appendix 2) the President of the United States was authorized to take over mines like that belonging to the Respondent and it was provided that when such mine was taken over

> "The United States shall make just compensation * * * for the taking over, use, occupation or operation * * * of any such necessaries * * * deposit, mine, or plant or part thereof."

And it was further provided in that Act, section three thereof, that

> "If the compensation so determined be unsatisfactory, * * * such person, firm, or corporation shall be paid seventy-five per centum of the amount so determined and shall be entitled to sue the United States to recover such further sum as added to such seventy-five per centum will make up such amount as will be just compensation." (Appendix 3, seq.)

This definitely fixed "just compensation" as the legal right of the mine owner. While mines were not formally taken over by the President, in effect, the mines of Respondent and of others were taken over and operated by the President. As the Act of October 5, 1918, became a law just prior to the Armistice, it was found necessary to provide means for protecting and compensating those persons whose properties had in substance been taken over, although not in the form prescribed in the Act of October 5, 1918, and that is why in order to meet the Nation's obligation the Act of March 2, 1919, was passed.

There is nothing in the Act of March 2, 1919, that changes the measure of the right to recover of persons whose property had been actually or in effect taken over by the Government. There still remained the right to "just compensation," the right being to have, in the language of the amended statute, an adjustment that was "just and equitable" and to have payment for "net losses." "Net losses" and "just compensation" are essentially synonymous, and the words "just" and "equitable" are emphatic words requiring a liberal interpretation. There can be no doubt that "just compensation" includes all losses, and losses measure just compensation. In *Seaboard Air Line Railway Company v. United States*, 261 *U. S.* 299, this Court said:

> "The above rule referred to, that in the absence of agreement to pay or statute allowing it, the United States will not be held liable for interest on unpaid accounts and claims, does not apply here. The requirement that 'just compensation' shall be paid is comprehensive, and includes all elements, and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation * * *"

In *Brown v. United States*, 263 *U. S.* 78, pp. 86 and following, this Court uses interchangeably in argument the words "injury," "loss," "just compensation," and holds that property having been condemned by the United States, in measuring the compensation, interest would be allowed and this, said the Court, was

> "a palpably fair and reasonable method of performing the indispensable condition to the exer-

cise of the right of eminent domain, namely, the making of just compensation."

In *Brooks-Scanlon Corporation v. United States*, 265 *U. S.* 106, "the loss of use of money" was considered among losses, and where the Government's obligation was to protect against losses this Court (p. 126) said that such losses

> "* * * with other pertinent facts are to be taken into account and given proper weight to determine the amount claimant lost * * *; that is, the sum which will put it in as good a position pecuniarily as it would have been if its property had not been taken."

In support of this statement the Supreme Court cites numerous cases, including the Seaboard Air Line case, above, and if that rule be applied Respondent and others may recover interest as such because such recovery is necessary "to put it (them) in as good a position pecuniarily as it (they) would have been in" if they had not acceded to the requests and demands of the Government.

In *The Atlas*, 93 *U. S.* 302, 310, damages were held to require "that the measure of compensation shall be equal to the amount of injury received." Interest is allowed when compensation is to be made. *United States v. North Carolina*, 136 *U. S.* 211, 216.

"Just compensation," said this Court in *Seaboard Air Line R. Co. v. United States*, 261 *U. S.* 299, 304, 306, means:

> "* * * the full and perfect equivalent of the property taken * * *. The owner shall be put in as good position pecuniarily as he would have been if his property had not been taken * * *.

> The owner is not limited to the value of the property at the time of the taking; he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking. Interest at a proper rate is a good measure by which to ascertain the amount so to be added."

And further:

> "The addition of interest allowed by the District Court is necessary in order that the owner shall not suffer loss and shall have just compensation to which he is entitled."

See also *Waite v. United States*, 282 *U. S.* 508; *Liggett & M. Tobacco Co. v. United States*, 274 *U. S.* 215.

It follows from these premises that interest is allowable against the United States by the words "legal damages" *ex vi termini*. If additional reason for this conclusion be needed, it will be found in the definite determination of this Court that the obligation of the United States to pay interest may be imposed by the name of damages as well as by the name of interest.

Interest may itself be allowed where the Act of Congress uses the word "damages." If legal damages include interest, losses similarly do.

In *The Santa Maria*, 10 *Wheat*, 431, 445, Mr. Justice Story, speaking for the Court, said:

> "Damages are often given by way of interest for the illegal seizure and detention of property; and, indeed, in cases of tort, if given at all, interest partakes of the very nature of damages."

It follows from these authorities, we respectfully submit, that a just and equitable determination of losses requires the payment of all losses, including interest lost; and when, as here, a claimant has paid out and lost money, the only question is, was the purpose of the payment to carry out the request and demand of the Government? As this purpose is admitted, it follows that the losses should be paid.

This conclusion but follows the law that substance rather than form governs especially when the right is for what is "just and equitable."

The New York case, above, and a proper construction of the statute, relieve Respondent from the necessity of relying on this argument but under the authorities just cited what Respondent paid and agreed to pay as interest constitutes a loss which the United States has specifically agreed to pay.

### D. Congressional Construction Confirms Respondent's Contentions

#### Petitioner, Grasping at Every Possible Support for His Arguments, Herein Refers to Administrative Construction

It has hereinbefore been shown that Congress from the beginning criticized the administration of the Act of 1919.

Very shortly after the administration of that Act began, the House of Representatives, H. J. Res. 170, conducted elaborate investigations critical of the administration of this Act, and, on March 25, 1920, voiced its criticism in a report copied in the Appendix

hereto, page 28. Following this report, on November 23, 1921, the Act was liberalized (Appendix, post 29).

The Supreme Court of the District of Columbia and the Court of Appeals of the District sustaining Respondent's right to recover, the Secretary of the Interior called the matter to the attention of Congress and Congress enlarged the appropriation to meet these decisions. See letter of the Secretary, Appendix page 32; Act of June 7, 1924, Appendix page 34.

This Court having found that the decisions of the Court of Appeals and of the Supreme Court of the District in the former case should be reversed for lack of jurisdiction, Congress thereafter conferred jurisdiction with the Act of February 13, 1929. The learned counsel for the Secretary in this case contends that the Act of 1929 means practically nothing. If it means what the counsel for the Secretary contends, it was unnecessary for the Congress to do anything since no Court could disturb what the Secretary of the Interior was doing. Had Congress not acted there might have been some evidence of acquiescence in the rulings of the Secretary.

Instead of doing this, Congress, by the Act of 1929, provided that the decisions of the Secretary on law questions were not to be final but were to be subject to change by the courts. There is no room for logical argument that there is an implication of Congressional approval of the rulings of the Secretary then being made under this law.

Congress went even further, however, so far as this question of interest payments is concerned. It

selected as the courts which were to review the decision of the Secretary on this law question the courts which were already definitely committed to the opinion that the Secretary's ruling was wrong, and by the Act of 1929 gave these particular courts the power to override this legal ruling. It is interesting to note that some of the arguments here made by Petitioner not only were not made or relied on by the Secretary but are actually contrary to what the Secretary found.

The only possible implication as to what Congress expected these courts to do in their review of the Secretary's rulings on this particular point was that such courts would enforce what they had already published as their views. The whole implication, from the history of the legislation, is a Congressional disapproval of the Secretary's ruling in so far as they were against Respondent and an approval of the opinion of the courts of the District holding that Respondent should receive its "net losses" for interest paid and obligations therefor.

Respectfully submitted,

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